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JAMES D. WELCH
ATTORNEY AT LAW
PROFESSIONAL ENGINEER

INTELLECTUAL PROPERTY
402-391-4448

10328 PINEHURST AVE.
OMAHA, NEBRASKA 68124

December 21, 2001

Assistant Commissioner
for Patents
Patent & Trademark Office
Washington, D.C. 20231

RE: SUBMITTAL OF CIP UTILITY PATENT APPLICATION.

Dear Sir;

Please find enclosed a CIP Utility Patent Application titled "SPECTROSCOPIC ROTATING COMPENSATOR ELLIPSOMETER SYSTEM WITH PSEUDO-ACHROMATIC RETARDER SYSTEM", a signed Declaration, a signed Status as a Small Entity Form, an Information Disclosure, a Request of Non-Publication, and a check for $880.00, (eg. $370.00 Basic Filing Fee, + $294.00 for Ten (10) Independent Claims + $216.00 for Forty-four (44) Claims Total).

Please note that even though this Application purposely utilizes language similar to that in Patents 6,320,657 B1 and 6,134,012 to Aspnes et al., the purpose of this Application is not to initiate an Interference but rather to establish a clear Examination-Based-Distinction between Patent Rights owned by the J.A. Woollam Co. Inc., and those owned by Thermawave Inc. in view of Priority Patents 5,706,212 and 5,872,630 and Allowed CIP-Parent Application Serial No. 09/496,011 owned by the J.A. Woollam Co. Inc.; and in view of Patents to Aspnes et al., Nos. 6,320,657 B1, 6,134,012, 5,973,787 and 5,877,859 which are owned by Thermawave Inc.

In particular, the Thermawave 657 and 012 Patents recite the presence of:

a "Substantially Non-Achromatic Retarder", (657 Patent);

and

a compensator characterized in that "an effective phase retardation value is induced covering at least from 90 degrees to 180 degrees", (012 Patent), over a range of wavelengths.

The Claims in the accompanying Application recite, in language purposely similar to that used in the Aspnes et al. 657

and 012 Patent Claims, (to narrow the focus to a specific Issue):

> the presence of "Other than Substantially Non-Achromatic", or "Pseudo-Achromatic" Retarders, with description of defining retardation variation ranges over a described range of wavelengths being given therefore.

For instance a "Pseudo-Achromatic" Retarder is described in the Claims in the accompanying Application as one that provides a range of retardations, (that is, maximum retardance minus minimum retardance), of less than 90 degrees over a range of wavelengths, said range of retardations being bounded by a minimum of preferably at least 30 degrees, to a maximum of less than 135 degrees, (thereby excluding retardations between 135 and 225 degrees and specifically 180 degrees), over a range of wavelengths. For example, over a range of wavelengths the retardation range could be from more than 30 to 120 degrees, (because 30 + 90 = 120), or from 45 to less than 135 degrees, (because 45 + 90 = 135). Further, a wavelength range can be any range of wavelengths, for example, 200 to 800 nm or 190 to 1700 nm, where a compensator provides a range of retardations which is less than 90 degrees thereover.

Because Patent No. 5,706,212 described "Other-than-a-Substantially Non-Achromatic Retarder" in a Spectroscopic Rotating Compensator Ellipsometer, and because the present Application Continues-In-Part therefrom, there is Basis for Claiming Other-than-a-Substantially-Non-Achromatic Retarder, (eg. Pseudo-Achromatic Compensator), in the present Application, with Priority back to 03/20/96. Note that 03/20/96 is an earlier filing date than the earliest Priority Aspnes et al. Patent, No. 5,877,859, which was filed on 07/24/96. Other intervening CIP Applications Assigned to J.A. Woollam CO. as Patents provide further basis, definition and priority for Claiming "Pseudo-Achromatic Retarder Means" in a Spectroscopic Rotating Compensator Ellipsometer in this CIP Application, as distinct from the "Substantially Non-Achromatic" Retarders recited or described in the Claims in the Aspnes et al. 657 and 012 Patents.

There is no Interference situation initiated by this Application as it is not contested that in the context of a Spectroscopic Rotating Compensator Ellipsometer, the Thermawave Patents Nos. 6,320,657 B1, 6,134,012, 5,973,787 and 5,877,859, cover the use of a "Substantially Non-Achromatic" Compensator, Compensators characterized in that "an effective phase retardation value is induced covering at least from 90 degrees to 180 degrees" over a range of wavelengths; and Compensators wherein "the range of wavelengths and the compensator are selected such that at least a first effective phase retardation value is induced that is within a primary range of 135 to 225

degrees, and at least a second effective phase retardation is induced that is outside of said primary range".

The specific primary issue then in the accompanying CIP Application is the Patentability of Claims to "Pseudo-Achromatic Compensators" in a Spectroscopic Rotating Compensator Ellipsometer, CIP priority disclosure for which is found in the earlier filed Applications which matured into the 212 and 630 Patents, and in an Allowed CIP Co-Pending Application Serial No. 09/496,011, which again, the present Application Continues from, In-Part, which Patents are owned by J.A. Woollam Co.

It is further noted that Fig. 10j in the accompanying Application shows that an experimentally determined effective Fast Axis Azimuthal Orientation of a disclosed invention "Pseudo-Achromatic" Compensator Azimuthal Orientation, varies with wavelength. This is considered to be an additional important distinction over the "Substantially-Non-Achromatic" Compensators described in the Aspnes et al. Patents, in which Compensators the fast axis does not change with wavelength.

Applicant will accept Issue of the Present Application under a Terminal Disclaimer based on the 212 and 630 Patents and the Patent to Issue based on the 011 Application.

Please enter the Application for Examination.

Sincerely,

JAMES D. WELCH
JW/hs
enc.

PTO/SB/35 (11-01)
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NONPUBLICATION REQUEST UNDER 35 U.S.C. 122(b)(2)(B)(i)	First Named Inventor	BLAINE D. JOHS
	Title	SPECTROSCOPIC ROTATING COMPENSATOR...
	Atty Docket Number	

I hereby certify that the invention disclosed in the attached application **has not and will not be** the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing.

I hereby request that the attached application not be published under 35 U.S.C. 122(b).

12/28/2001
Date

Signature

BLAINE D. JOHS
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application **upon filing.**

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant **must** notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. **Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).**